

January 18, 2008

RE: Director's Review Request

Dear Mr. Fadden:

On November 30, 2007, I sent you a letter addressing the timeliness of your Director's review request. On December 13, 2007, I sent a letter to Mr. Robert Riordan, Human Resources Manager at Monroe Correctional Complex, requesting that he respond to the timeliness issue.

On December 6, 2007, you responded that your allocation determination letter from Mr. Riordan "did not state that electronic mail was an unacceptable way to respond." Although Mr. Riordan's letter may not have addressed the requirements for requesting a Director's review, WAC 357-49-022 states, "[t]he individual or employee requesting the director's review has the burden of proof in a director's review." Accordingly, it is the employee's responsibility to file the Director's review request as described in Chapter 357-49 WAC, which governs the Director's review process. As noted in my November 30, 2007 letter, WAC 357-49-023(3) states that a Director's review request may only be filed by electronic mail with the advance approval of the Director.

The relevant issue is whether your request is timely according to WAC 357-13-080(1), which requires employees to request the Director's review within thirty calendar days "of being provided the results of a position review or the notice of reallocation." You provided an email dated December 6, 2007, from Larry Stott, Business Representative, Teamsters Local Union No. 117, which reads in part, "I received the letter via mail approximately three days after the date on the denial letter . . ." Although the email is from Mr. Stott, it appears the content of the email is your written response.

In a letter dated December 21, 2007, Mr. Riordan stated: "this is to certify that the attached letter dated September 19, 2007 to Mr. Michael Fadden . . . denying [your]reallocation . . . was placed in the outgoing regular mail on September 19, 2007. At the latest, the letter would have had a postmark of September 20, 2007." This is

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consistent with your statement that you received the letter "approximately three days after" the date on the letter.

WAC 357-04-105(2) states, in part, "service of notice upon parties will be regarded as completed when personal delivery has been accomplished; or upon deposit in the United States mail . . ." Based on Mr. Riordan's indication that your letter was deposited in the outgoing mail on September 19, 2007, you were provided (served with) the allocation determination on that date. The deadline for requesting review elapsed on October 19, 2007. Since your request (apart from an unauthorized e-mail request) was not received until October 23, 2007, it was untimely, and the matter is closed.

Please refer to your Collective Bargaining Agreement regarding appeal rights to the Personnel Resources Board.

Sincerely,

Teresa Parsons
Director's Review Supervisor
Legal Affairs Division

c: Robert Riordan, DOC